

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 60  
 TAYLOR COUNTY HIGHWAY EMPLOYEES : No. 51360  
 LOCAL 617, AFSCME, AFL-CIO : MA-8353  
 :  
 and :  
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 TAYLOR COUNTY :  
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Appearances:

Mr. Philip Salamone, Staff Representative, on behalf of the Union.  
Mr. Charles A. Rude, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Medford, Wisconsin, on December 14, 1994. The hearing was not transcribed and both parties waived filing briefs. I there issued a series of bench decisions, which this Award augments.

Grievance No. 6-94:

ISSUE

Did the County violate the contract when it failed to offer certain overtime work to its Tandem Truck Drivers in August and September, 1994 and, if so, what is the appropriate remedy?

This grievance centers on the approximately ten and a quarter hours total overtime that the County assigned on certain early mornings in August and September, 1994, to its most senior Highway Department employes, as opposed to assigning that overtime to the four employes classified as Tandem Truck Drivers.

The Union asserts that the early morning overtime should have been assigned to the Tandem Truck Drivers because such truck driving work is covered by their job descriptions. The County, in turn, relies on Article, 4, Section 8, of the contract which provides:

"Every reasonable effort will be made to assign overtime to the employee with the assigned beat, or, if that employee refuses, to another employee on a seniority/geographic basis."

As I ruled at the hearing, the County did not violate this proviso or the applicable job descriptions because: (1), there is no proof that any of the Tandem Truck Drivers lost any overtime, as they instead were assigned about the same amount of overtime at the end of the days in question; and (2), the contract does not clearly establish that such overtime must first be offered to the Tandem Truck Drivers rather than to the most senior Highway Department employes. In the future, though, the County will be required to first offer such truck driving work to the Tandem Truck Drivers if it is feasible to do so and then, if it is refused, to the other most senior Highway Department employes pursuant to Article 4, Section 8, of the contract.

Grievance No. 1.94

ISSUE

Did the County violate the contract when it failed to offer certain truck driving work to grievant David Kmosena and, if so, what is the appropriate remedy?

This grievance centers on the Union's claim that the County violated the contract when it failed to assign grievant Kmosena - who is classified as a Tandem Truck Driver - to drive a truck on May 5, 1994. Again, this claim is predicated on the Union's assertion that all truck driving work must be first assigned to the Tandem Truck Drivers pursuant to their job descriptions.

But, again, there is no merit to this claim because: (1) Tandem Truck Drivers routinely perform non-truck driving work during the approximately ten-month period that there is no major construction work; and (2), the County had a legitimate reason for not making that assignment to grievant Kmosena, i.e., the fact that he was cutting brush that day and that he thus was in the best position to know how that task should have been completed - a key fact which grievant Kmosena himself admitted. In the future, however, better communication between management and bargaining unit members might be able to overcome some of the misunderstandings which arose over this situation.

Grievance No. 2-94

ISSUE

Did the County violate the contract when it refused to recall laid-off employes to perform certain work in the summer of 1994 and, if so, what is the appropriate remedy?

This grievance centers on the Union's assertion that the Company violated Article 9, Section 4, of the contract when it refused to recall laid-off employes to perform certain work which was performed by two summer employes in the summer of 1994. 1/

The problem with this claim is that Article 9 provides in pertinent part:

. . .

Section 3. Whenever it becomes necessary to employ additional workers, either in vacancies or new positions therein, former qualified employees who have been laid off within one (1) year prior thereto shall be entitled to be re-employed in such vacancy or new position for which they may qualify, in preference to all other persons. (Emphasis added).

Section 4. No new employee shall be hired while there are senior employees on the laid off list who are able to perform the work available.

. . .

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1/ Summer employes are in the bargaining unit. The County did not hire summer employes in 1992 or 1993 because of budgetary considerations. Hence, there is no merit to the Union's claim that these prior situations represented an acknowledgement by the County that it could not hire summer employes over previously laid-off employes.

The key phrase here is "employees who have been laid off within one (1) year prior thereto. . ." This language clearly establishes that recall rights last only one year, after which point laid off employes have no rights whatsoever since they at that point are no longer covered by the contract. Here, since the affected employes were laid-off in 1992, it must be concluded that they had no recall rights in 1994 when the County hired summer employes for its construction season.

Grievance No. 3-94

ISSUE

Did the County violate the contract when it used Chippewa County employes to perform certain work on July 18, 1994, and, if so, what is the appropriate remedy?

This grievance centers on the Union's assertion that the County violated the contract on July 18, 1994, when it contracted with Chippewa County to have two Chippewa County highway employes tar cracks on Highway 13 in Stetsonville, Wisconsin, on an overtime basis without first offering any overtime to the approximately ten County employes who worked on the project that day.

This grievance, too, is without merit because: (1), the County hired Chippewa County to do that work because someone from the State of Wisconsin - which contracts with Taylor County for the repair and maintenance of State roads - told it to; and (2), the County's distributor truck was being repaired that day, thereby making it necessary to hire an outside service which had that equipment.

Upon the basis of the above, it is my

AWARD

1. That the County did not violate the contract when it failed to offer certain overtime work to its Tandem Truck Drivers in August and September, 1994. In the future, however, it will offer such overtime to its Tandem Truck Drivers if it is feasible to do so.

2. That the County did not violate the contract when it failed to offer certain truck driving work to grievant David Kmosenka.

3. That the County did not violate the contract when it refused to recall laid-off employees who had been laid-off for more than a year to perform certain work in the summer of 1994.

4. That the County did not violate the contract when it used Chippewa County employees to perform certain work on July 18, 1994.

Dated at Madison, Wisconsin this 29th day of December, 1994.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator